

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Revisions to Library Reference Rule)

Docket No. RM98-2

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS IN RESPONSE TO ORDER NO. 1263
ON FURTHER PROPOSED REVISIONS TO
LIBRARY REFERENCE PRACTICE (THIRD SET)
(October 13, 1999)

The Office of the Consumer Advocate hereby comments upon the Commission's Order on Further Proposed Revisions to Library Reference Practice (Third Set) issued September 23, 1999, in Order No. 1263. The order proposes amendments to the Commission's Rule 31(b), 39 CFR 3001.31(b), and invites comments no later than 20 days after publication of the proposal in the Federal Register. The order was published in the Federal Register on September 30, 1999. 64 FR 52725.

Overall, the proposed rules are workable and the requirement for a detailed notice will be an improvement over the current rules. Good faith compliance by participants filing library references with the new notice requirements will be of great assistance to participants reviewing documentary material and tracking sources in library references.

The Commission has again rejected the OCA suggestion for a cross-walk to serve as a road map tying library references to the testimony. OCA continues to prefer

that the rule include a requirement for a cross-walk. Nevertheless, OCA's views on the matter have been expressed in several pleadings and OCA will not reargue the point.¹

The Commission order recognizes reviewers would be assisted by the suggested cross-walk but defers the request out of concern for the additional complexity it might add to the Postal Services' preparation of a formal request. The Commission notes that such cross-walks might be required in the future if found necessary for due process. The Commission further expresses the hope that any cross-walk prepared in the course of the filing will be made available voluntarily by the Postal Service and states that discovery requests for such information are permissible. OCA hopes that the Postal Service will make available to the participants any material it prepares that will assist the parties in linking library references to its testimony and exhibits. This would also benefit the Postal Service as it would reduce the number of interrogatories from OCA and other participants seeking clarification or explanation when the linkages between documentary materials are missing, or unclear.

The following comments address the proposed rules *seriatim*:

Subsection 31(b)(1)

OCA suggests an adjustment to Section 31(b)(1) *Documentary material*. Pursuant to a previous comment by OCA, the Commission proposes inserting a new sentence requiring that testimony, exhibits, and supporting conclusions premised on data or conclusions developed in a library reference shall provide the location of that

¹ See Office of the Consumer Advocate Comments in Response to Order No. 1219 on Proposed Revisions to Commission Rules on Library References, October 14, 1998 at 8-11 and Office of the Consumer Advocate Comments in Response to Order No. 1223 on Proposed Revision to Commission Rules on Library References, February 1, 1999 at 2-7.

information within the library reference. OCA suggests, inasmuch as this section of the rule relates to and is styled documentary material and not library references, that the Commission expand the terms of the sentence to require the location of underlying information developed in other testimony, other exhibits or other supporting workpapers. This is consistent with the Commission's comment in the order that, "The Commission does agree with the basic OCA premise that the rule should clearly set out the current expectation that *testimony and exhibits* presented in Commission proceedings should contain adequate citation for specifically referenced source material." (Emphasis supplied, Order at 6). The modified sentence would read:

Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference, *other testimony, other exhibits, or other supporting workpapers* shall provide the location of that information within the library reference, *testimony, exhibits, and supporting workpapers* with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. (Proposed language italicized.)

Subsection 31(b)(2)(iii)

OCA also suggests a clarification of the language in Section 31(b)(2)(iii). The subsection relates to other circumstances where it may be appropriate to file a library reference, "but for the inability to satisfy the terms set out in subsection 31(b)(2)(ii)(A)-(D)." The specific subsections referenced, (A) through (D), do not include the "unduly burdensome" requirement. That requirement is set out in the second sentence of 31(b)(2)(ii), and stands as a threshold requirement for any of the conditions specified in subsections (A) through (D). It appears the Commission's intent is that a library reference must have physical characteristics that make compliance with the service

requirements unduly burdensome, even when filing pursuant to the “Other circumstances” of subsection 31(b)(2)(iii). This subsection permits the filing of any material as a library reference in unusual circumstances. However, neither the discussion nor the proposed rule clearly indicates the Commission’s intent as to whether the material must, in “other circumstances,” be too burdensome to serve on the participants, that is, whether the burden of service is one of the “other applicable requirements” of subsection 31(b)(2)(iii)(B). Unless clarified, this may lead to some confusion in determining whether acceptance is appropriate. OCA recommends that the “unduly burdensome” condition be specifically applicable to subsection 31(b)(2)(iii).

Subsection 32(b)(2)(iv)(H)

OCA proposes clarification of subsection 32(b)(2)(iv)(H) by adding the words “into the record” after “entered.”

Subsection 32(b)(2)(vi)

OCA suggests modifying proposed subsection 32(b)(2)(vi) by adding after the word “is”, the words “encouraged but.” As revised, subsection 32(b)(2)(vi) would read, “Inclusion of a preface or summary in a library reference addressing the matters set out in subsection 31(b)(2)(iv)(A)-(H) is encouraged but optional.” This will encourage the Postal Service to continue its acknowledged practice of providing in the vast majority of instances a preface to its library references which currently serves as a convenience to the participants and the Commission.

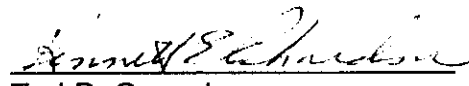
Subsection 31(b)(2)(vii)

Proposed Rule 31(b)(2)(vii), relating to filing electronic versions, states, “Participants are encouraged to include in the electronic version [of the library

reference] the information and disclosures required to be included in the accompanying notice." OCA suggests a revision to require that where the notice is submitted to the Commission in an electronic format, and when it is not feasible to include the notice within the electronic file of the library reference, that the notice instead be included electronically with, but not within, the electronic version of the library reference. By requiring the electronic version of the notice to accompany the library reference there is a greater likelihood that the notice will be available to reviewers than if the Commission merely encourages the inclusion of the notice within the library reference. A requirement that the notice at least accompany the electronic version of the library reference, if it is not included within it, will better insure ready access to the detailed notice.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

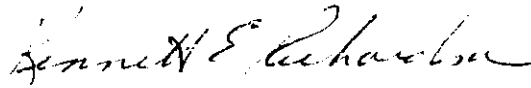


Ted P. Gerarden
Director

Kenneth E. Richardson
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in cursive script, appearing to read "Kenneth E. Richardson".

Kenneth E. Richardson

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